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11 UNITED STATES OF AMERICA  
12 NATIONAL LABOR RELATIONS BOARD  
13 REGION 31

14 DTG OPERATIONS, INC.,

15 Employer,

16 and

17 COMMUNICATIONS WORKERS OF  
18 AMERICA, AFL-CIO, CLC, LOCAL 9003,

19 Petitioner,

Case No. 31-RC-173039

**REQUEST FOR BOARD TO TAKE  
ADMINISTRATIVE NOTICE OF  
DECISION OF THE REGIONAL  
DIRECTOR**

20 The Union in this matter requests that the Board take judicial notice of the Decision of the  
21 Regional Director in Case 31-RC-175375, a copy of which is attached as Exhibit A. In that case,  
22 the Regional Director dismissed the Petition, finding that the employees were guards. That  
23 Decision is subject to a pending Petition for Review filed by the Petitioner.

24 As reflected in the Decision, 31-RC-175404 was withdrawn.

25 The Request for Review should be dismissed. The Request for Review is so frivolous that

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1 sanctions should be sought against counsel and the Employer. In any case, it is now moot.

2 Dated: June 28, 2016

Respectfully Submitted,

3 WEINBERG, ROGER & ROSENFELD  
4 A Professional Corporation

5 /s/ *David A. Rosenfeld*  
6 By: DAVID A. ROSENFELD

7 Attorneys for Petitioner COMMUNICATIONS  
8 WORKERS OF AMERICA, AFL-CIO, CLC,  
9 LOCAL 9003

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# EXHIBIT A

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**DTG OPERATIONS, INC.**

**Employer**

**and**

**Case 31-RC-175375**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO, CLC, LOCAL 9003**

**Petitioner**

**FIREFLY RENT A CAR, LLC**

**Employer**

**and**

**Case 31-RC-175404**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO, CLC, LOCAL 9003**

**Petitioner**

**DECISION AND ORDER**

On May 3, 2016, in Case 31-RC-173039, the National Labor Relations Board (Board) certified the Communications Workers of America, AFL-CIO, CLC, Local 9003 (Petitioner) as the collective bargaining representative of employees employed by DTG Operations, Inc. (Dollar Thrifty) in the following unit (the Unit):

**Included:** Employees employed by DTG Operations, Inc., involved in the rental of vehicles under the brands Dollar and Thrifty at the following two locations: 9150 Aviation Blvd., Inglewood, CA 90301 and 5440 W. Century Blvd., Los Angeles, CA 90045, including Rental Sales Agents (RSA), Express Agents, Instant Return Agents, and Lot Attendants.

**Excluded:** All other employees, including courtesy bus drivers, mechanics, vehicle service attendants, tire and lube workers, Back Office Administrators, Exit Gate Agents, employees involved in the rental of vehicles under the brand Firefly, Managers, and guards supervisors as defined in the Act, as amended.

On May 3, 2016, the Petitioner filed petitions 31-RC-175375 and 31-RC-175404 under Section 9(c) of the National Labor Relations Act (the Act) seeking an *Armour-Globe*<sup>1</sup> election to represent additional classifications of employees employed by Dollar Thrifty and Firefly Rent A Car LLC (Firefly), respectively, to be added to the bargaining unit certified in Case 31-RC-173039.

On May 4, 2016, I ordered that Cases 31-RC-175375 and 31-RC-175404 be consolidated for hearing and a hearing was held on May 13 and May 16, 2016 before a Hearing Officer of the Board. At the hearing, the Acting Regional Director granted the Petitioner's motion to amend the petition in Case 31-RC-175404. However, after the hearing, the Petitioner requested to withdraw the petition in Case 31-RC-175404 on June 1, 2016 and, as reflected in the Order below, I am approving that request. Thus, this Decision will solely address the issues raised with respect to the Petition in Case 31-CA-175375, in which Petitioner seeks to add Exit Gate Agents<sup>2</sup> employed by Dollar Thrifty at 9150 Aviation Blvd., Inglewood, CA 90301 and 5440 Century Blvd., Los Angeles, CA 90045 to the Unit certified in Case 31-RC-173039.

The issue litigated at the hearing with respect to the petition in Case 31-RC-175375 was as follows: whether Exit Gate Agents employed by Dollar Thrifty are guards under Section 9(b)(3) of the Act and, if they are not, whether an *Armour-Globe* election is appropriate.<sup>3</sup>

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. As explained below, based on the record, post-hearing briefs,<sup>4</sup> and relevant

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<sup>1</sup> An *Armour-Globe* election permits employees sharing a community of interest with an already represented unit of employees to vote whether they wish to be added to the existing unit. *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *In re Unisys Corp.*, 354 NLRB 825, 829 (2009).

<sup>2</sup> During the hearing, the terms "Exit Gate Agent," "Exit Gate Attendant," and "Security Representative" were used interchangeably. Dollar Thrifty clarified on the record that these classifications are synonymous.

<sup>3</sup> In addition to this issue, the Employers also sought to litigate two additional related issues. First, the Employers wanted to litigate whether the Petitioner is barred for six months from seeking to represent Exit Gate Agents based on the withdrawal of the petition pursuant to the Stipulated Election Agreement in Case 31-RC-173039; in other words, whether – by signing the Stipulated Election Agreement – the Petitioner in effect withdrew the petition as to Exit Gate Agents. The Acting Regional Director decided this issue would not be litigated because there was no factual or legal basis to establish that there was a withdrawal of a petition with prejudice. I hereby affirm that decision. Second, the Employers wanted to litigate whether the Petitioner is barred for six months from seeking to represent Exit Gate Agents based on the fact that the Stipulated Election Agreement in Case 31-RC-173039 provided that this classification would be explicitly excluded. The Acting Regional Director decided this issue would not be litigated because there was no legal basis to establish that the Petitioner's agreement to exclude the classification in Case 31-RC-173039 bars the Petitioner from seeking to represent the classification for six months. I hereby affirm that decision.

<sup>4</sup> All parties were given the opportunity to file post-hearing briefs. Dollar Thrifty and Firefly filed a joint post-hearing brief; the Petitioner did not file a post-hearing brief.

Board law, I find that the Exit Gate Agents are guards within the meaning of Section 9(b)(3) of the Act and are thereby precluded from being represented in a mixed unit.

## **I. THE PARTIES' POSITIONS**

### **A. The Employers' Position**

Dollar Thrifty and Firefly (collectively, the Employers), argue that the Exit Gate Agents are statutory guards and that as such, this classification cannot be added to the pre-existing unit. The Employers cite to *Wells Fargo Armored Services*, 270 NLRB 787 (1984) for the proposition that Section 9(b)(3) of the Act precludes the certification of a mixed unit of statutory guards and non-guards. The Employers argue that the Exit Gate Agents are statutory guards because their primary function is to prevent the Employer's car fleet from being stolen, and they receive training in this respect. In support of this argument, the Employers state that the Board has found statutory guards in situations where employees do not necessarily enforce rules against other employees, but instead, "enforce against unauthorized persons rules to protect the safety of the [employer's] equipment, keep unauthorized persons off the property, and protect the premises" quoting *Allen Services Co. Inc.*, 314 NLRB 1060, 1062 (1994).

### **B. The Petitioner's Position**

The Petitioner asserts that Exit Gate Agents are not guards and have a community of interest with the employees in the pre-existing unit.

## **II. THE EMPLOYERS' OPERATIONS**

### **A. Background**

Dollar, Thrifty, and Firefly are three rental car brands owned and operated by Hertz Corporation (Hertz). These entities are engaged in the business of providing car rental services to consumers at Los Angeles International Airport (LAX). Originally, Hertz acquired Dollar and Thrifty as part of a single transaction in late 2012. Dollar and Thrifty cater to a mid-price range consumer base. In 2013, Hertz created Firefly, which is a brand that caters to consumers who are extremely price conscious.

### **B. Operations**

Dollar and Thrifty operate on different lots that are about one mile apart. Dollar is located at 9150 Aviation Boulevard in Inglewood, California (Dollar lot). Thrifty is located at 5440 Century Boulevard in Los Angeles, California (Thrifty lot). Firefly is housed entirely within the Thrifty lot. There are separate counters for the consumers for each of the three brands. When consumers wish to rent a car from Dollar, they go to the Dollar lot. The Dollar lot's hours of

operation are 24 hours per day, seven days per week. When consumers wish to rent a car from Thrifty or Firefly, they go to the Thrifty lot. Thrifty and Firefly have separate counters in the same building. The Thrifty lot's hours of operation are from 5am to 12am, seven days a week.

Hertz, Dollar, Thrifty, and Firefly share a car fleet comprised of approximately 19,000 rental vehicles at LAX. Of those vehicles, a specific number of vehicles are dedicated to each brand. The vehicles are often reassigned between Dollar, Thrifty, and Firefly based on supply and demand. For example, if Thrifty or Dollar faces a shortage of a particular kind of vehicle, it can obtain more of those vehicles from the fleet, irrespective of whether those vehicles are designated as Thrifty, Dollar, or Firefly vehicles. Similarly, if Firefly needs more vehicles, it can obtain them from Thrifty's or Dollar's designated fleet based on availability. Some vehicles are stored at the Dollar lot or Thrifty lot, while other vehicles are stored in outside lots that are not accessible to customers.

### **C. Revenue and Non-Revenue Gates**

Rental vehicles in the Dollar and Thrifty lots are kept unlocked, with the keys inside. To minimize the theft of its fleet, the Dollar and Thrifty lots have certain security features. The Dollar lot is surrounded by thick concrete walls. The Thrifty lot is surrounded by a fence and thick posts throughout the perimeter. The only way that customers and employees can drive rental vehicles in and out of the lots is by using designated gates called "non-revenue" and "revenue" gates.

Revenue gates are used by customers to drive a rental vehicle off the Dollar and Thrifty lots. Revenue gates have booths that are staffed by Exit Gate Agents. Each of these booths has a long metal arm barrier that is lowered to either block vehicles from exiting or is raised to permit passage. A few feet beyond the metal arm barrier is a ground device called "tiger teeth." Tiger teeth can puncture tires of rental vehicles that are being driven off the lot, thereby rendering such vehicles undriveable to prevent theft. The booths at the revenue gates have security cameras that record rental vehicles and customers as they drive off the lot. The security cameras are not monitored in real time; they are used by Dollar Thrifty and Firefly to investigate incidents that occurred in the past.

"Non-revenue" gates are used by customers to enter the lot to return a rental vehicle. The non-revenue gates have booths that are staffed by employees of Securitas, a security company. The non-revenue gates have reverse-tiger teeth that will not damage vehicles attempting to enter the lot, but will damage vehicles attempting to exit the lot unless they are lowered. In addition to being used by customers, non-revenue gates are used by employees who need to drive rental vehicles in and out of the lot. Although employees are only supposed to use the non-revenue gates (instead of the revenue gates) to move rental vehicles off the lots, it is common for employees to use the revenue gates to exit the lots.

During non-operational hours, the revenue and non-revenue gates at the Thrifty lot are blocked with other vehicles to restrict ingress and egress. The gates at the Dollar lot are always operational since the lot is open 24 hours per day, seven days per week. Firefly does not have its own designated revenue and non-revenue gates; it uses the same gates as Thrifty.

#### **D. Exit Gate Agents**

Customers process their rental contract at the counters of either Dollar, Thrifty, or Firefly. After this, customers walk to the lot and choose a rental vehicle. Since the vehicles are kept unlocked with the keys inside, customers can simply get behind the wheel of any rental vehicle irrespective of whether the terms of the contract allow the customer to drive that particular vehicle. After the customer chooses a rental vehicle, the customer must drive through a revenue gate to exit the lot.

At the revenue gate, each vehicle stops at a booth staffed by an Exit Gate Agent. Exit Gate Agents ensure that every customer driving a rental vehicle off the lot is authorized to do so. Exit Gate Agents help keep track of vehicle inventory, and they have the ability to sell various upgrades to customers, such as vehicle or fuel upgrades. There are about 16 Dollar Thrifty employees who work as Exit Gate Agents.

Exit Gate Agents stop each rental vehicle at the revenue gate by lowering the metal arm barrier and raising the tiger teeth. Exit Gate Agents verify whether the driver is authorized to drive the particular rental vehicle off the lot. They do this by asking for the driver's license and rental contract. They ensure that the driver's license is valid and check that the name on the license matches the customer name on the contract. Exit Gate Agents also check to make sure that the contract permits the customer to drive that particular vehicle. The Exit Gate Agents use a computer tablet to scan a barcode on the customer's contract and another barcode located on the vehicle. Scanning the barcodes with the tablets allows the Exit Gate Agents to keep track of which vehicles from the Employers' fleet are rented. It also helps Exit Gate Agents determine whether a particular vehicle has a service hold that makes it unavailable for rent until it gets serviced by the mechanics.

If the customer is authorized to drive the rental vehicle, the Exit Gate Agents allow the customer to drive off the lot by raising the metal arm barrier and lowering the tiger teeth. If a customer is not authorized to drive the vehicle, the Exit Gate Agents will not remove these barriers, thereby preventing the vehicle from exiting the lot. For example, an Exit Gate Agent, testified about an incident where he prevented an individual from driving off the lot when he realized that the individual had a fake driver's license. The Senior Director of Operations for Dollar Thrifty testified about another incident where an individual pretending to be a Thrifty customer attempted to drive a vehicle off the lot, but when the Exit Gate Agent did not allow the individual to exit, the individual abandoned the vehicle by the revenue gate and fled the scene. Other times, customers are not authorized to drive a particular vehicle because the vehicle they



selected is different from what is specified in the contract. For example, a customer who books a reservation online for a particular type of vehicle, but attempts to drive out with a different type of vehicle, would be stopped by the Exit Gate Agent and directed to return to the lot to resolve the issue. If the customer is simply in a vehicle that is considered an upgrade, the Exit Gate Agent can sell the customer a vehicle upgrade and process additional payment at the gate or direct the customer to go back to the lot to pick a different vehicle. When the Exit Gate Agent is not able to resolve a particular issue and the customer refuses to go back to the lot, the Exit Gate Agent calls a manager to obtain assistance by using a two-way radio. Exit Gate Agents typically process about 2-4 upgrades of any kind per month, such as vehicle upgrades or fuel upgrades. An Exit Gate Agent, testified that she understood one of her primary job responsibilities was to prevent rental vehicles from leaving the lot if there was an issue with the license, an issue with the contract, or another issue that seemed suspicious.

Although revenue gates are reserved for customers, and employees are supposed to move rental vehicles through the non-revenue gates, in practice, employees will sometimes drive rental vehicles out of the lots by going through revenue gates. In instances when employees use the revenue gates, the Exit Gate Agents verify the employee identification of the driver before allowing them to exit through the revenue gate. If the employee does not have an employee identification, the Exit Gate Agent will not remove the protective barriers.

Exit Gate Agents do not make rounds on the Dollar and Thrifty lots. They do not monitor the non-revenue (entrance) gate. They do not carry weapons and they are not bonded or fingerprinted. They wear the same uniforms as other Dollar Thrifty and Firefly employees and do not have any special designation to identify them as security personnel. Upon hire, Exit Gate Agents receive an online training regarding how to scan vehicles and how to deal with asset protection, fraud, and theft. Aside from that initial training, Exit Gate Agents do not receive additional special training that is different from trainings received by other Dollar Thrifty or Firefly employees. Exit Gate Agents do not escort individuals off the Employers' property, are not trained or expected to use any kind of physical force to detain individuals who may be causing problems, and are not trained to call the police when security issues arise.<sup>5</sup> When such issues do arise, the Exit Gate Agents must contact a manager for assistance. Exit Gate Agents do not write incident reports to document situations involving attempted vehicle theft. Other employee classifications will cover for Exit Gate Agents, but will do so only very sporadically.

Whereas Exit Gate Agents staff the booths by the revenue gates, Securitas representatives staff the booths by the non-revenue gates. Securitas guards ensure that the employees attempting to exit the lots through the non-revenue booths have clearance from Dollar Thrifty or Firefly. For example, a Thrifty manager who wants to drive a rental vehicle to a different lot stops at the non-revenue gate. A Securitas guard asks for the employee's employment identification, scans it, and

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<sup>5</sup> The Senior Director of Operations testified that the revenue gate booth at the Dollar lot has a silent duress alarm which, if pressed, summons the police. However, it is unclear from the record whether Exit Gate Agents are authorized to press the alarm, have ever used the alarm, or are even aware of the alarm's existence.

scans the barcode on the vehicle with the same kind of tablet as used by the Exit Gate Agents for purposes of inventory control. If the individual has clearance to drive the vehicle off the lot, the Securitas guard will remove the physical barrier to allow passage. After Thrifty's and Firefly's operations close at 12:00 a.m., Securitas guards continue to be on duty. Securitas guards wear different uniforms than Dollar Thrifty and Firefly employees. They also do not carry firearms.

### III. DISCUSSION

Section 9(b)(3) states that the Board shall not "decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." Congress enacted this section out of a concern about conflicts of interest that might arise if guards were represented by unions that also represented non-guard employees. *Burns Security Services*, 300 NLRB 298, 299 (1990) enf. denied 942 F.2d 519 (8th Cir. 1991). As the Board noted in *The Boeing Company*, 328 NLRB 128, 130 (1999), Congress was particularly concerned about the role a disputed employee may play during a period of industrial unrest or strike by other employees of the employer. Congress sought to prevent conflicts that might arise if during a strike by non-guard employees represented by the same union as guards, the guards were required to enforce security rules against their striking co-workers. *Id.*

In this case, the Exit Gate Agents engage in a combination of guard and non-guard duties. Exit Gate Agents' major responsibility is to ensure that individuals are authorized to drive a particular vehicle out of the lot. With respect to customers, Exit Gate Agents check the contract against the vehicle that the customer is driving as well as the driver's license. With respect to employees using the revenue gate, Exit Gate Agents verify the driver's employee identification. When Exit Gate Agents are not able to determine whether an individual – whether customer or employee – is authorized to drive the rental vehicle, they deny them egress by not removing the metal arm barrier and tiger teeth. In this manner, Exit Gate Agents prevent vehicle theft and prevent individuals from exiting the lots without authorization. Thus, the duties of Exit Gate Agents are similar to those of the Securitas representatives with respect to protecting against vehicle theft. Just like the Securitas representatives, the Exit Gate Agents in practice – as noted above – also check employees' identifications to ensure that employees are authorized to drive vehicles out of the lots. Therefore, I find that because Exit Gate Agents have a significant role in protecting the Employers' property, including from unauthorized use by employees, they are guards within the meaning of the Act. See, e.g., *Stern's, Paramus*, 150 NLRB 799, fn 48 (1965) (holding that fitting room checkers tasked with limiting the number of garments allowed per customer in a fitting room were guards because they enforced rules to protect the property of the employer from theft); see also, *Broadway Hale Stores*, 215 NLRB 46, 46 (1974).

I do not view as dispositive that the Exit Gate Agents do not wear special uniforms, do not make security rounds, do not carry weapons, and are not trained or expected to use any kind of physical force. The Board has held that it is "sufficient," for purposes of being deemed statutory guards, to merely "observe and report infractions" when it is "an essential part of the [e]mployer's procedures for protecting the premises and equipment." *Allen Services Co. Inc.*, 314 NLRB 1060, 1060-62 (1994) (employees who did not wear guard uniforms, carry firearms, received no special guard training, and merely observed and reported trespass infractions to the police are statutory guards because this was essential to protecting the employer's property and equipment). Here, as explained above, Exit Gate Agents play a crucial role in enforcing the Employers' verification rules against employees and customers to prevent theft during business hours. It is notable that the practice of leaving rental vehicles unlocked, with the keys inside the vehicle, makes the Employers particularly vulnerable to vehicle theft and loss of revenue.<sup>6</sup>

In addition, the fact that Exit Gate Agents can sell upgrades, help keep track of the Employers' fleet inventory, and have other non-security related functions does not negate that they have significant guard responsibilities. See, e.g., *Wells Fargo Alarm Services*, 289 NLRB 562, 563 (1988) (although service technicians were primarily responsible for repairing and servicing their customers' security systems, another essential job duty was to immediately notify the customer and the police or fire department when the customer's security alarm had been triggered).

Accordingly, I find that Exit Gate Agents are statutory guards within the meaning of Section 9(b)(3) of the Act and are thereby precluded from being represented by Petitioner given that it already represents non-guards in the pre-existing Unit at Dollar Thrifty.<sup>7</sup> Therefore, I am dismissing the Petition.

### ORDER

For the reasons outlined above, IT IS HEREBY ORDERED that the petition in Case 31-RC-175375 is dismissed.

IT IS FURTHER ORDERED that the Petitioner's request to withdraw the petition in Case 31-RC-175404 is approved.

<sup>6</sup> Although security cameras are stationed near the revenue gates to record vehicles as they approach the revenue gate, they do not diminish the importance of the Exit Gate Agents' role in enforcing the Employers' verification policies to prevent theft. This is so because the Employers do not monitor the security cameras in real time; instead, they are used as surveillance footage for after-the-fact investigations.

<sup>7</sup> In light of the conclusion that Exit Gate Agents are Section 9(b)(3) guards, I find it unnecessary to address whether the Exit Gate Agents share a community of interest with the pre-existing unit of Dollar Thrifty employees to warrant an *Armour-Globe* election.

DTG Operations, Inc.  
Case 31-RC-175375


Firefly Rent A Car, LLC  
Case 31-RC-175404

### RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 16, 2016**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: June 2, 2016

  
MORI RUBIN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 31  
11500 W Olympic Blvd Ste 600  
Los Angeles, CA 90064-1753

2 **CERTIFICATE OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

4 I am employed in the County of Alameda, State of California. I am over the age of  
5 eighteen years and not a party to the within action; my business address is 1001 Marina Village  
Parkway, Suite 200, Alameda, California 94501.

6 On June 28, 2016, I served the following document(s) described as

7 **REQUEST FOR BOARD TO TAKE ADMINISTRATIVE NOTICE OF DECISION OF**  
8 **THE REGIONAL DIRECTOR**

9 on the interested parties in this action by emailing true copies thereof addressed as follows:

10 **SERVICE LIST**

11 Mori Rubin, Regional Director  
12 National Labor Relations Board, Region 31  
13 11500 West Olympic Boulevard, Suite 600  
Los Angeles, CA 90064  
Mori.rubin@nrlrb.gov

14 Matthew Miklave, Esq.  
15 Robinson & Cole LLP  
666 3<sup>rd</sup> Avenue, Floor 20  
16 New York, NY 10017-4132  
mmiklave@rc.com

17 Executed on June 28, 2016, at Alameda, California.

18 I declare that I am employed in the office of a member of the bar of this Court at whose  
19 direction the service was made. I declare under penalty of perjury under the laws of the United  
States of America that the foregoing is true and correct.

20 /s/ Karen Kempler  
21 Karen Kempler  
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